

BETWEEN : PUBLIC PROSECUTOR

CRC 40-1993

A N D : GARAE BEN

Coram : J. W. VON DOUSSA AJ

Prosecutor : HILARY TOA

Defence : STEVEN JOEL - PUBLIC SOLICITOR

REASONS FOR JUDGMENT

You have been convicted of 1 count of Rape. You have pleaded guilty to that count and I take into consideration the fact that you have admitted the offence. The rape took place on the 11th of May 1993. I accept what your counsel has said, that there had been a customary engagement between you and the victim, but it is quite clear that you knew by the day of the rape that the relationship you had with the girl had broken down, you got another girl to tell untrue stories to the victim so that you could get her to go into the bush and away from the volley ball game so that you could have contact with her. Although your counsel said that you wanted to speak with her, it is clear from the things that happened later that you had another plan. You put that plan into effect by threatening this girl who would not cooperate with your wishes with a knife. It was because of the knife and your threats to use it that this frightened the girl submitted to your desire. The laws about rape in this country are intended to protect females from the unwanted advances of the men. Even under your custom law and the engagement ceremony that you have been through, you had no right to do to this girl what you did. The law restricts as very serious the crime of rape and that it is even more serious where a knife is used to threaten the victim. It is the duty of the court when sentencing someone guilty of rape, to impose a sentence which gives the clear message to everyone in the community, that anyone who commits a rape will be dealt with seriously.

The penalty has to be one which teaches you not to do it again, and also gives the warning to everybody else in the community. It is necessary therefore that the sentence be one of imprisonment. You are several years older than the girl and you used your superior age and strength as part of the threat against her. Where there is an age difference like that and where a knife is used as a threat, heavy jail sentences will be imposed. It is not the practice of the courts in this country to lay down hard and far scales of imprisonment for different types of crimes. Every case will be considered on its own particular facts and there are a number of facts particular to your case which I must take into account. Which will have the effect of the sentence, will be somewhat shorter than other people might receive for similar crime. I take into account your upbringing and life in a remote village and that you come from an environment where the customary law still has a big influence on your life. I take into account the fact that there had been some relationship between you and the girl in advance of this day of the rape. I give a significant discount on the sentence because you admitted the crime when you were spoken to about it and because you have pleaded guilty. You get a discount for that reason because firstly you have saved the Republic of Vanuatu the expense of a trial and because you saved the girl, the victim the embarrassment of having to come here and tell her story. I also take into account in your favour that this is the first time you've been in trouble with the Police.

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*Taking those matters into account I sentence you to be in Prison for a period of 3 years and 6 months. That sentence will commence from the 13th May 1993. In accordance with the law if you are a good behavior in jail, you will become entitled to remissions for good behavior. So you may serve a shorter period in jail.*

Dated this 7th day of July 1993 in Luganville Santo, VANUATU.

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J. W. VON DOUSSA  
Acting Justice